

871—41.3(17A,ExecOrd11) Criteria for waiver or variance.

41.3(1) The director of the workforce development department shall make a decision as to whether circumstances justify the granting of a waiver or variance. Waivers or variances are granted at the discretion of the director after consideration of relevant facts. The requester shall assume the burden of persuasion with regard to a request for waiver or variance of an administrative rule. The person requesting the waiver or variance of the rule must provide clear and convincing evidence that compliance with the rule will create an undue hardship on the person for whom the waiver or variance is requested; the waiver or variance of the rule on the basis of the particular circumstances relevant to that specified person would be consistent with public interest; substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested; and the waiver or variance of the rule in the specific case would not prejudice the substantial legal rights of any person.

41.3(2) The agency shall deny a request for waiver or variance of an administrative rule if the request waives or varies any statute in whole or part. The agency shall deny any request if it does not comply with the provisions of this rule. The agency may grant waiver or variance of a rule if it finds that application of all or a portion of the rule to the circumstances of the specified person would not, to any extent, advance or serve any purposes of the rule. The agency will deny a request unless there are exceptional circumstances justifying an exception to the general application of the rule in otherwise similar circumstances. A waiver or variance shall be denied if the material facts presented in the request are not true or material facts have been withheld. The agency may request additional information from the requesting party relative to the application and surrounding circumstances.